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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/822,568

04/12/2004

Thunder Jalili

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2642

23859 7590 10/09/2007  
NEEDLE & ROSENBERG, P.C.  
SUITE 1000  
999 PEACHTREE STREET  
ATLANTA, GA 30309-3915

EXAMINER

CHOI, FRANK I

ART UNIT

PAPER NUMBER

1616

MAIL DATE

DELIVERY MODE

10/09/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

**Application No.**

10/822,568

**Applicant(s)**

JALILI, THUNDER

**Examiner**

Frank I. Choi

**Art Unit**

1616

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-25 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 14 April 2004 is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 20040830, 20070515.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_.

## DETAILED ACTION

### *Claim Rejections - 35 USC § 112*

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1-25 are rejected under 35 U.S.C. 112, first paragraph, because the specification, while being enabling for delaying the onset or slowing the progression of hypertension in a subject, does not reasonably provide enablement for prevention of the hypertension. The specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to use the invention commensurate in scope with these claims.

#### *The nature of the invention:*

The invention is directed to the prevention, delaying or slowing the progression of hypertension with quercetin.

#### *The state of the prior art and the predictability or lack thereof in the art:*

The prior art, as indicated in the prior art rejections below, disclose the delaying and slowing of the progression of hypertension with quercetin but the prior art does not provide evidence of prevention. As such, predictability with respect to prevention is low.

#### *The amount of direction or guidance present and the presence or absence of working examples:*

The Specification provides examples of delaying and slowing of the progression of hypertension with quercetin but the examples show that hypertension was not prevented (Specification, paragraph 0072).

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*The breadth of the claims and the quantity of experimentation needed:*

The claims are broad in that they claim prevention of hypertension with quercetin, however, Applicant's Specification discloses an example that shows that hypertension was not prevented. The scope of the term "prevention" is such that administration of quercetin will prevent hypertension over the life time of the subject. As such, one of ordinary skill in the art would be required to do undue experimentation in order to determine whether administration of quercetin can prevent hypertension.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-3, 7,8,10,14,15,16 are rejected under 35 U.S.C. 102(b) as being anticipated by Duarte et al..

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Duarte et al. expressly disclose oral administration of 10 mg/kg of quercetin in 1% methylcellulose which lowered blood pressure and reduced left ventricular weight compared to controls (Abstract, Pages 118-120).

Claims 1-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Duarte et al. in view of Wakat et al. (US Pat. 6,054,128) and Schmitz et al. (US Pat 6,610,320).

Duarte et al. disclose oral administration of 10 mg/kg of quercetin in 1% methylcellulose which lowered blood pressure and reduced left ventricular weight compared to controls (Abstract, Pages 118-120).

Wakat discloses the combination of quercetin (preferably about 500 mg) with other nutrients, such as vitamin C and vitamin E and minerals, such as calcium, magnesium copper, manganese, iron, etc., which can be formulated as a consumable liquid, such as juices, or food, which is used to meet a persons cardiovascular system health needs (Column 3, lines 35-68, Columns 4-6, Column 7, lines 1-44).

Schmitz et al. disclose the combination of quercetin with proteins, soluble fibers, rice bran oil, carbohydrates, fats and vitamins and minerals, that the food can be in the form of a cookie and that the food can be used reduce blood pressure (Column 6, lines 38-68, Columns 7-9, Column 10, lines 1-49, Column 13, lines 14-27)

The prior art discloses oral administration of 10 mg/kg of quercetin in 1% methylcellulose which lowered blood pressure and reduced left ventricular weight compared to controls. The difference between the prior art and the claimed invention is that the prior art does not expressly disclose the combination with other vitamins and minerals and the formulation of foods and other beverages or drinks containing the same. However, the prior art amply suggests

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the same as the prior art discloses the combination of quercetin with other vitamins and minerals and the formulation of the same in beverages, such as juices and foods, such as cookies, that can include proteins, carbohydrates, fats and soluble fibers. As such, one of ordinary skill in the art would have been motivated to modify the prior art as above with the expectation that the quercetin nutritional beverages and foods would be effective in lowering blood pressure and reducing left ventricular hypertrophy.

Therefore, the claimed invention, as a whole, would have been *prima facie* obvious to one of ordinary skill in the art at the time the invention was made, because every element of the invention has been collectively taught by the combined teachings of the references.

### ***Conclusion***

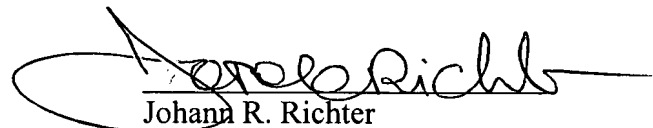
A facsimile center has been established in Technology Center 1600. The hours of operation are Monday through Friday, 8:45 AM to 4:45 PM. The telecopier number for accessing the facsimile machine is 571-273-8300.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Frank Choi whose telephone number is (571)272-0610. Examiner maintains a compressed schedule and may be reached Monday, Tuesday, Thursday, Friday, 6:00 am – 4:30 pm (EST).

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's Supervisor, Johann R. Richter, can be reached at (571)272-0646. Additionally, Technology Center 1600's Receptionist and Customer Service can be reached at (571) 272-1600.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Frank Choi  
Patent Examiner  
Technology Center 1600  
October 1, 2007

  
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